

**Board of Contract Appeals**  
General Services Administration  
Washington, D.C. 20405

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March 2, 2004

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GSBCA 16263-RELO

In the Matter of KEITH O. BIDDLECOM

Keith O. Biddlecom, Belton, TX, Claimant.

David M. England, Assistant General Counsel, Office of General Counsel, Defense Commissary Agency, Fort Lee, VA, appearing for Department of Defense.

**HYATT**, Board Judge.

An earnest money deposit and an option fee paid to the seller do not constitute reimbursable residence transaction expenses that may be defrayed by the Government in connection with a transferring employee's purchase of a house at the new duty station.

Background

Claimant, Keith O. Biddlecom, is a civilian employee of the Defense Commissary Agency (DeCA). In 2003, he was transferred from California to Fort Hood, Texas. Incident to this transfer, which was effective in April 2003, Mr. Biddlecom purchased a house in Belton, Texas. He submitted a claim for reimbursement of various expenses incurred at closing. The agency approved reimbursement of most of the expenses claimed, but declined to reimburse claimant for the amounts of \$500 for an earnest money deposit and \$50 for an option fee paid to the seller of the house. Claimant asks the Board to review the disallowance of these amounts.

In response to Mr. Biddlecom's request for review, DeCA explained that it disallowed these two fees because the agency has no authority to reimburse these amounts under applicable regulations.

Discussion

The agency properly concluded that it could not reimburse Mr. Biddlecom for the amounts in issue here. The Board has previously explained that earnest money deposits are

generally not reimbursed as real estate transaction expenses incurred incident to transfer. This is because

the earnest money deposit is simply an advanced partial payment toward the total amount that will be due from the purchaser at settlement. This partial payment is applied at settlement as a credit against the total amount due from the purchaser. The earnest money is not an expense, nor does it increase the total financial obligation of the purchaser. If claimant had not paid the . . . earnest money deposit before settlement, he would have had to pay [that amount] . . . at settlement. Claimant is not entitled to reimbursement of the earnest money.

Alfred A. Davis, GSBCA 15888-RELO (Sept. 11, 2002). Here, as in Davis, the purchase was completed and the earnest money deposit was credited towards the purchase price of the house.<sup>1</sup>

The option fee is similarly not eligible for reimbursement as a closing cost. In Texas, at the time of entering into a contract to buy a house, the purchaser may pay to the seller of the house a nominal amount, referred to as an option fee, to preserve, for a short period of time, the unrestricted right to terminate the contract without forfeiting the earnest money deposit. When the sale goes forward, the option fee is generally credited back to the buyer at closing and applied to the purchase price of the house. It appears, from the settlement statement submitted by claimant, that this was the case here. Thus, this fee, like the earnest money deposit, may not be refunded by the agency as a reimbursable real estate transaction expense.

The agency properly denied this claim.

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CATHERINE B. HYATT  
Board Judge

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<sup>1</sup> One exception to this rule is where a transfer for the convenience of the Government is canceled or otherwise modified by the agency and the employee is thereby prevented from completing the purchase of a residence. In those instances, the forfeited earnest money may be reimbursed as a miscellaneous expense. Christopher A. Haubert, GSBCA 13980-RELO, 97-1 BCA ¶ 28,864.